REMARKS

The Office Action of April 12, 2010, has been reviewed and these remarks are responsive thereto. No new matter has been added. Claims 1-7, 9, 10, 12-21, 23 and 32-39 are pending upon entry of the present paper. Reconsideration and allowance of the instant application are respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 1-7, 9, 10, 12-21, 23 and 32-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. pub. no. 2002/0055999 to Takeda ("Takeda") in view of U.S. pub. no. 2003/0152028, to Raisanen et al. ("Raisanen 2003"). Applicants respectfully traverse these rejections.

Amended independent claim 1 recites, among other features, "transmitting the stored network data to a remote network entity for analysis of the stored network data at the remote network entity; subsequent to transmitting the stored network data to the remote network entity, receiving a trigger signal at the monitoring apparatus from the remote network entity in response to a critical situation corresponding to the quality of service of the application." Illustrative, non-limiting support for the amended features of claim 1 may be found in the filed specification when read as a whole, and for example, at page 6, line 21 – page 7, line 7; page 8, lines 17-24; and page 11, lines 1-33.

The applied documents fail to teach or suggest transmitting stored network data to a remote network entity for analysis of the stored network data at the remote network entity, and subsequent to transmitting the stored network data to the remote network entity, receiving a trigger signal at the monitoring apparatus from the remote network entity in response to a critical situation corresponding to the quality of service of the application. For example, the Office Action at page 3 analogizes the measuring hosts of Raisanen 2003 to the monitoring apparatus of claim 1 and analogizes the QoS manager (QM) of Raisanen 2003 to the remote network entity of claim 1. Even assuming (without admitting) that such analogies would have been proper, Raisanen 2003 at paragraph [0056] describes *the measuring hosts* calculating the QoS parameter values and delivering the results of that calculation to the QM. Accordingly, Raisanen 2003 fails

to teach or suggest transmitting stored network data to a remote network entity for analysis of the stored network data at the remote network entity (much less receiving a trigger signal at the monitoring apparatus from the remote network entity in response to a critical situation corresponding to the quality of service of the application subsequent to transmitting the stored network data to the remote network entity as recited in claim 1) because in Raisanen 2003 any alleged analysis takes place at the measuring hosts.

Notwithstanding whether a combination of Takeda and Raisanen 2003 would have been proper, Takeda fails to remedy the deficiencies of Raisanen 2003 discussed above with respect to claim 1. Claim 1 is distinguishable from the applied documents for at least the foregoing reasons.

Claims 13, 32 and 37 recite features similar to those discussed above with respect to claim 1 and are distinguishable from the applied documents for at least the similar reasons.

Claims 2-7, 9, 10, 12, 14-21, 23, 33-36, 38 and 39 are dependent claims and are thus distinguishable from the applied documents for at least the same reasons as their respective base claims and further in view of the combinations of features recited therein. For example, claim 4 recites, *inter alia*, "wherein the archive is configured to store data from a plurality of monitoring apparatuses." In the rejection, the Office Action at page 6 merely states that "the limitations of these dependent claims do not introduce any additional features not found in their independent claims 1, 13, 32 and 37." Applicants respectfully disagree for at least the reasons discussed at pages 10-11 of the Amendment filed December 22, 2009 (the contents of which are incorporated herein by way of reference). In short, claim 1 (upon which claim 4 depends) does not specifically recite the network archive being configured to store data from a plurality of monitoring apparatuses. Furthermore, none of the cited documents teach or suggest such a feature. For example, Raisanen 2003's description of the QoS database does not include any teaching or suggestion of the QoS database being configured to store data from a plurality of monitoring apparatuses. At most, Raisanen 2003 merely describes the QoS database as storing data for the corresponding QM. Raisanen 2003 at paragraph [56]. Claim 4 is distinguishable from the applied documents for at least these additional reasons.

In the event that the Office maintains a rejection of claim 4, Applicants respectfully request that the Office answer the substance of the foregoing remarks. MPEP § 707.07(f)

(providing that where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it) (emphasis added).

The Office's treatment of claims 2, 4-6, 12, 14, 16, 17, 19, 21, 23, 33, 35, 36, and 39 at page 6 of the Office Action improperly distills the invention down to its gist or thrust and improperly shifts the burden to Applicants to demonstrate nonobviousness when the Office has failed to make out a *prima facie* case of obviousness. MPEP § 2141.02 (II) (providing that distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole."); MPEP § 2142 (providing that the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness and that if the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness). If the Office maintains the rejection of claims 2, 4-6, 12, 14, 16, 17, 19, 21, 23, 33, 35, 36, and 39, Applicants respectfully request the Office to support the rejection of each of the those claims with citations to the applied document(s) in order to provide Applicants with a more substantive basis for responding.

Claim 3 recites "measuring the quality of service based on the network data in synchronized fashion with at least one other monitoring apparatus." The Office Action at page 6 contends that Takeda at paragraphs [0051] and [0056] describes the above-noted features recited in claim 3. However, Takeda at paragraphs [0051] and [0056] (or any other paragraph of Takeda, for that matter) fails to teach or suggest measuring a quality of service based on network data in synchronized fashion with at least one other monitoring apparatus. Indeed, Takeda at paragraphs [0051] and [0056] is completely silent with respect to synchronization. Claim 3 is allowable for at least these additional reasons.

In the event that the Office maintains a rejection of claim 3 based on Takeda, Applicants respectfully request that the Office specify *how* the cited paragraphs of Takeda allegedly teach or suggest measuring a quality of service based on network data in synchronized fashion with at least one other monitoring apparatus. Similar remarks apply with respect to claims 15, 34, and 38.

CONCLUSION

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

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